IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

WEDNESDAY, THE 4TH JULY 2007 / 13TH ASHADHA 1929

CRL.A.No. 74 of 2000()

CC.337/1997 of JUDL.MAGISTRATE OF FIRST CLASS-II, CHERTHALA, DT.25.10.1999.

.....

APPELLANT: COMPLAINANT

R.ELIZEBATH, W/O.BHADRAN,
ARUN NIVAS, AROOR P.O.,
CHERTHALA.

BY ADV. SRI.C.K.SAJEEV
SMT.T.B.MINI

RESPONDENTS: ACCUSED
----

1. K.V.SATHYAN, S/O.VELAYUDHAN,
PONNAKATTIL, AROOR PANCHAYATH,
AROOR P.O.

2. STATE OF KERALA, REP.BY THE
PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.

BY ADV. SMT.M.S.MARIA JAIN
PUBLIC PROSECUTOR SRI.AMJAD ALI

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 04/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.R. UDAYABHANU, J.

Crl.A.No.74 of 2000

Dated 4th July, 2007

JUDGMENT

Appellant is the complainant in C.C.No.337/97 with respect to the offence under section 138 N.I.Act which stands dismissed and the accused acquitted.

2. Although notice was served on the accused/respondent, there was no representation.

3. The case of the complainant is that the accused borrowed from her a sum of Rs.10,000/- on 20-2-97 and towards discharge of the same, issued the impugned cheque dated 22-2-97 which when presented got dishonoured for want of funds in the account of the accused. Lawyer notice was sent. But no reply was received in time and no payment was made. Reply was received from the accused only after filing of the complaint.

4. The evidence adduced in the matter consisted of the testimony of PWs 1 and 2 and Exts.P1 to P6.

5. PW2 is an occurrence witness who has testified

that he witnessed the incident of the complainant paying Rs.10,000/- to the accused on the particular day. The trial court dismissed the complaint disbelieving the version of PW-1 as in the cross examination it was brought out that the father of the accused had borrowed a sum of Rs.14,000/- from the complainant and for the same, father of the accused had executed a promissory note and the accused executed a cheque as guarantor for the above transaction. She has answered in the affirmative to the question that it is the above cheque that has been presented by the complainant . The court below has noted that the above answer indicated that it is the cheque obtained as security to the transaction in between the complainant and father of the accused that has been presented and on dishonour of the same, the present complaint has been filed.

6. It is submitted by the counsel for the appellant that the above answer in the cross examination of PW-1 is just a slip and that she would have confused as she was

asked with respect to the transaction in between herself and the father of the complainant. It can be seen from the cross examination of PW-1 that she has stated that she has instituted a civil proceedings vide O.S.No.611/97 in the Munsiff court, Cherthala against the father of the accused. Further, it is pointed out that in the reply notice received by the complainant subsequent to the filing of the complaint, the case set up by the accused is that he had borrowed a sum of Rs.3000/- from the complainant and in the above transaction, she had got executed a promissory note for Rs.6000/- and also a blank cheque and for the amount due and interest, i.e., Rs.6,600/- was repaid. The above reply notice although produced and seen marked as Ext.P7, the same is not mentioned in the appendix of the judgment nor is the same seen marked through the witness. Hence, the above aspects of the case, i.e., the case set up by the accused which is not consistant, has not been brought out in the evidence.

In the circumstances, I find that the matter requires

reconsideration. The case is remitted back to the trial court for fresh disposal after permitting the parties to adduce further evidence if they so desire, and untrammelled by any of the observations contained in this judgment.

The parties shall appear before the court below on 8-8-2007.

The Crl.appeal is disposed of accordingly.

K.R.UDAYABHANU,
JUDGE.

Kvm/-

K.R.UDAYABHANU, J.

CRL.A. 74 OF 2000

JUDGMENT

4-7-2007.